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No. 80-1666

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JOHN R. LARSON, ET AL., *Appellants*

v.

PAMELA VALENTE, ET AL., *Appellees*

On Appeal From The United States Court Of Appeals For The Eighth Circuit

BRIEF OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, OF THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A., AND OF THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, AMICI CURIAE, IN SUPPORT OF APPELLEES

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QUESTION PRESENTED

Whether the religious exemption provision of the Minnesota Charitable Solicitations Act, which subjects some churches but not others to onerous burdens, violates the Establishment Clause of the First Amendment.

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To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

For the reasons stated in this brief, the General Conference of Seventh-day Adventists, the National Council of Churches, and the Baptist Joint Committee on Public Affairs, Friends of this Court, respectfully submit that the judgment of the Court of Appeals should be affirmed.

INTEREST OF AMICI CURIAE

The General Conference of Seventh-day Adventists represents its more than 600,000 members in this country. The Church conducts an annual Ingathering pro-

gram, a spiritual ministry in which the goal of Church members is to distribute Adventist literature in every home, to enroll interested persons in a home Bible-study course, to discuss religious matters with and pray with interested persons, and to offer every contact an opportunity to give a freewill offering to help support the church's worldwide health, education, welfare, and evangelistic ministry. Though the Adventist churches in Minnesota are exempt under the state's Charitable Solicitation's Act because the tithes and offerings of members make up the overwhelming percentage of Church income, the Church is alarmed at government attempts on many levels to intrude into the inner workings of denominations, the unequal treatment of churches under the statute in question, and the possibility that the exemption that presently shields the Church in Minnesota might be struck down by this Court.

The National Council of the Churches of Christ in the U.S.A. (NCC) is the cooperative agency of thirty-two national religious bodies — Protestant and Eastern Orthodox — having an aggregate membership in the United States of over 40,000,000. The NCC engages in a variety of fund-raising activities in all parts of the country by means of radio, television, door-to-door, and direct-mail solicitations for a variety of religious purposes, including disaster relief, refugee settlement, redress of miscarriages of justice, and the Christian Rural Overseas Program (CROP). The NCC has been increasingly concerned about the trend on the part of state and local authorities to place legal barriers in the path of such religious ministries. As far back as 1928 its Governing Board, representing its constituent religious bodies,

adopted a resolution on regulation of charitable solicitations, which reads as follows:

> Whereas, numerous states and municipalities have undertaken to regulate charitable solicitations within their borders; and
>
> Whereas, such regulations are often overbroad and vague in their definitions and requirements; and
>
> Whereas, such regulations are designed to differentiate legitimate charities from charlatans without providing adequate exemptions for religious appeals, in which civil authorities are not equipped to distinguish faith from fraud; and
>
> Whereas charitable solicitations by churches are not only a means of raising voluntary financial contributions from interested contributors but a means of promulgating religious views and concerns; and
>
> Whereas, the increasing proliferation of requirements for registration (often involving registration fees of up to $50 per year) and onerous reporting of income, expenditures, major contributors, chief officers and other information increases the cost of undertaking such appeals and severely diminishes the remainder available for assisting the needy beneficiaries; and
>
> Whereas, such statutes often encumber the civil authorities with the responsibility for unconstitutionally determining what is a "religious" purpose and what is not;
>
> Therefore, be it resolved: that the Governing Board of the National Council of the Churches of Christ
>
> (1) considers such statutes purporting to regulate the charitable solicitations undertaken by churches[1] to be beyond the duty proper to civil authorities and restrictive of the free exercise of religion;

[1] The term "church" as used here is intended to include "churches, conventions or associations of churches."

(2) urges churches and other religious organizations to resist such statutes and to seek to have them determined to be unconstitutional;

(3) urges churches and other religious organizations to obviate the necessity for such regulations by preparing full and audited reports of their receipts and expenditures and making them available to all members and contributors, upon request, without waiting for civil intervention.

In implementation of that concern, the NCC entered Friend-of-the-Court briefs in *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U.S. 620 (1980), and *Heffron* v. *International Society for Krishna Consciousness, Inc.*, 101 S.Ct. 2559 (1981), and other recent solicitation cases. It now asks this Court to place clear limitations on a state's rights to regulate religious activity which takes the form of charitable solicitation.

The Baptist Joint Committee on Public Affairs is composed of representatives elected by eight national cooperating Baptist conventions and conferences in the United States. They are: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention. The Committee, in part, seeks to apply the traditional Baptist concerns for religious liberty and proper church-state relations to public affairs.

Appellants and Appellees have consented to the filing of this brief.

ARGUMENT I

The Minnesota Charitable Solicitations Act, as Applied to Appellees, Violates All Three Parts of This Court's Establishment Clause Test.

The Minnesota Charitable Solicitations Act, Minn. Stat. § 309.50-.61 (1980), as applied to the Appellees, violates all three prongs of this Court's Establishment Clause test. That test was first set out in *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971): "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statute must not foster an excessive government entanglement with religion." (Citations omitted.)

(A) The Exemption Provision of the Charitable Solicitations Act violates the Establishment Clause of the First Amendment because the state seeks to regulate religious organizations.

The Court of Appeals and Appellants in various contexts have pointed out what may be an inadequately developed record.[2] The Court of Appeals noted that it "would be more comfortable . . . if the record reflected or judicial notice could ascertain" facts concerning specific denominations that solicit funds from the public. 637 F.2d at 566. Appellants refer to "critical findings . . .

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[2] This Court has held that "summary procedures, however salutary where issues are clear-cut and simple, present a treacherous record for deciding issues of far-flung import. . . ." *Kennedy* v. *Silas Mason Co.*, 334 U.S. 249, 256-57 (1948). Since the record in this case is indeed treacherous on such subjects as legislative history, this Court may wish to hold that its noting of probable jurisdiction in this case was improvident and that this case should be remanded to the lower federal courts for additional development of basic facts relevant to this controversy.

where there is no factual record" and "[o]ther factual findings unsupported in the record and very much in dispute. . . ." Jurisdictional Statement at 14 and 15. The Court of Appeals and Appellants both still question whether the Unification Church is a religious organization. 637 F.2d at 570 and Jurisdictional Statement at 23.

Some of the missing pieces of this litigation puzzle involve the legislative history of the Charitable Solicitations Act. Appellants note that legislative history had not been an issue in the case before the ruling of the Court of Appeals. Appellants state: "The district court had made no findings with respect to legislative purpose. No reference to the legislative history was cited by either plaintiffs or defendants in their briefs to the Circuit Court and the Circuit Court's opinion cites no legislative history supporting its conclusions." Jurisdictional Statement at 10-11. Appellants then describe the conclusions of the Court of Appeals as "unjust and incorrect. There is no support for the court's conclusions regarding legislative motivation in the legislative history." Jurisdictional Statement at 12.

Appellants then proceed to outline what they consider the legislative history of the amendments to the Charitable Solicitations Act. Jurisdictional Statement at 12-13. That history reveals: (1)The exemption provision was drafted *primarily* in response to the State of Maryland's investigation into the fundraising practices of a Roman Catholic group, the Pallottine Missions. Id. at 13. (2)"There was *almost* no discussion of the statute's effect on any organization even arguably 'disfavored. . . .'" *Ibid.* (Emphasis added.) (3)Dialogue in the Senate Judiciary Sub-Committee revealed "the amendment would allow the state to regulate those organizations soliciting in airports and in the streets." *Ibid.* (4)One House mem-

ber did raise the question of "regulation of airport solicitation." *Ibid.* And (5)A House committee referred to the Pallottine Missions. *Ibid.*

Thus Appellants' version[3] of legislative history reveals that at least parts of the amendments to the Charitable Solicitation Act *were* drafted with the goal of regulating certain religious organizations — perhaps the Pallottine Missions — and particularly those soliciting in airports and in the streets, which seem to be the favored fund-raising locations for certain highly publicized new religious movements, of which the Unification Church is a prime example.

Appellants' revelation of legislative history clearly supports the Court of Appeals' holding that the exemption provision of the Charitable Solicitation Act does not survive the first prong of the Establishment Clause test because the legislature sought to regulate religious organizations. 637 F.2d at 567.

(B) The Exemption Provision of the Charitable Solicitations Act violates the Establishment Clause because the Provision is not religiously neutral; one of its primary effects is to inhibit Appellees' religion.

This court wisely has adhered to the principle that under the Establishment Clause of the First Amendment government must remain neutral in matters of religion.

In *Everson* v. *Board of Education,* 330 U.S. 1, 15, 18 (1947), this Court held that government cannot "pass laws which . . . prefer one religion over another," that government must "be a neutral in its relations" with

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[3] Friends of this Court wonder what a full examination of legislative history by Appellants and Appellees would reveal. See Footnote 2, *supra* at 5.

religions, and that government "power is no more to be used so as to handicap religions than it is to favor them." *Also see Zorach* v. *Clauson*, 343 U.S. 306, 314 (1952), and *Epperson* v. *Arkansas*, 393 U.S. 97, 103-04 (1968). In *Roemer* v. *Maryland Board of Public Works*, 426 U.S. 736, 745-46 (1976), this Court said government is required to be scrupulously neutral as among religions.

But a primary effect of the Minnesota Charitable Solicitations Act is that the state has ceased to be scrupulously neutral. The law in effect says some churches that solicit funds from the public must open their financial records to the public, while other churches do not need to do so. The Court of Appeals, in the view of the Friends of this Court, rightly held that the exemption based on the percentage of funds publicly solicited was impermissible "religious gerrymandering." 637 F.2d at 566, quoting *Gillette* v. *United States*, 401 U.S. 437, 452 (1971). The court said that "a significant effect" of the exemption section would be to relieve certain religious organizations of registration and disclosure requirements, which that court said were "certainly not *de minimis.*" 637 F.2d at 568.

Appellants contend that under this court's decision in *Gillette*, Appellees in this case have the burden of demonstrating a religious gerrymander. Brief for Appellants at 19. The legislative history cited in Appellants' Jurisdictional Statement, as shown above, points out the primary legislative goal of regulating those religious organizations soliciting in public places. Focusing on those particular kinds of religious groups certainly is a religious gerrymander.

A second religious gerrymander contained in the Charitable Solicitation Act involves the registration and reporting exemptions, Minn. Stat. § 309.515(1)(b),

which were added in 1978. Previously all religious organizations were exempted from the Act's registration and reporting requirements. Jurisdictional Statement at 7. The 1978 amendment exempts *only* religious organizations receiving more than 50% of their contributions from parent or affiliated organizations and/or their members.

Appellants seek to justify the exemption on two grounds: (1) "[M]embers are reasonably assumed to have control over solicitation of contributions from themselves and expenditure of the funds they contribute" and (2) "members of organizations have greater access to financial information as a matter of Minnesota law," specifically the Minnesota Non-profit Corporation Act, Minn. Stat. § 317.28(1980). Appellants' Brief at 28.

The first justification, however, is not supported in Appellants' Brief by any case law or references to the Record. Apparently it is just "reasonably assumed." But that assumption, unsupported, may *not* be reasonable. Do members of religious groups determine what offerings will be solicited from individual members or congregations? The answer may be "Yes" for congregational churches. But what is the answer for hierarchical churches — or for churches with some other kind of polity? The Seventh-day Adventist Church, which describes its polity as representative, annually adopts a Calendar of Special Days and Offerings that local congregations generally follow. 1980 *Annual Council Actions* [of the North American Division of that Church] at 86-88. And what kind of control — if any — do members of many religious groups have over the expenditure of funds they contribute? Again, the Record in this case is bare of any evidence. *But see Wheeler* v. *Roman Catholic Archdiocese of Boston, Inc.*, 389 N.E.2d 966 (Mass.

1979), *cert. denied,* 100 S. Ct. 208 (1979), in which members of a hierarchical church unsuccessfully sought to impose a trust on land bought with funds contributed to develop a cemetery but in fact used to build low- and moderate-income housing. Friends of this Court suggest that it *cannot* be reasonably assumed that members of any particular religious organization have control over the solicitation and expenditure of funds, since some simply are not organized along democratic or representative lines.

The State's second justification — that members have greater access to financial information under Minnesota law — also is suspect because it is *not* supported by evidence showing that religious organizations in Minnesota are incorporated under the State's Non-profit Corporation Act. Are the Roman Catholic, Seventh-day Adventist, Presbyterian, Lutheran, United Methodist, and other denominations in Minnesota incorporated under the State's Non-profit Corporation Act? There is no evidence to answer this question. If the answer is "No," then members of those religions do *not* have access to denominational books and records, unless the respective churches by constitution, bylaw, or policy permit such access, as some, though not all, do.

If members of churches in Minnesota in general do *not* have access to their church's books and records, then, as Appellants put it, "the need for public disclosure is obvious" for those churches too. Appellants' Brief at 29. All should be treated equally. The State's interest in public disclosure should be the same for all such denominations, though Friends of this Court argue in the next subsection that application of the disclosure requirements in the Act to any church runs afoul of the excessive-

entanglement prong of the Establishment Clause of the First Amendment.

In any event, this religious gerrymander violates the Establishment Clause of the First Amendment.

(C) The Charitable Solicitations Act, as applied to Appellees, violates the Establishment Clause because it excessively entangles church and state.

The Court of Appeals did not examine the third prong, that of excessive church-state entanglement, of this Court's Establishment Clause test. 637 F.2d at 569. Friends of this Court nonetheless believe the Minnesota Charitable Solicitation Act, as applied to Appellees and other religious organizations, violates that third prong of the Establishment Clause, thus making the Act unconstitutional. In the context of its application to religious groups, the Act is literally riddled with excessive entanglements between church and state.

Here are thirteen excessive entanglements required or permitted by the Act:

(1) A church with its registration statement must file copies of contracts with professional fundraisers and "[s]uch other information as the department may by rule or order require to promote fairness . . . and to assure full and fair disclosure." Section 309.52(m) and (p), Jurisdictional Statement at A-77. In addition to excessively entangling church and state, these requirements give apparently unlimited discretion to departmental personnel to order production of Church documents. Such discretion this Court considered a violation of the Free Exercise Clause of the First Amendment in *Cantwell* v. *Connecticut,* 310 U.S. 296, 305-06 (1940). In *NAACP* v. *Button,* 371 U.S. 415, 432-33 (1963), this Court also warned that First Amendment freedoms are endangered

by overly vague and overly broad statutes susceptible of sweeping and improper application.

(2) The annual report must be filed "upon forms provided by the department or on forms identical thereto." Section 309.53(1), Jurisdictional Statement at A-79. This requirement may force religious groups to restructure themselves in order to provide data required by the State. This court in *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94, 116 (1952), indicated that religious organizations, in a "spirit of freedom" and "independence from secular control or manipulation," have the power under the First Amendment, "to decide for themselves, free from state interference, matters of church government." The Minnesota Charitable Solicitations Act goes a long way toward sapping that vital spirit of freedom and independence. In addition, the annual report as such would be a continuing church/state entanglement. This Court found "continuing state surveillance" a violation of the Establishment Clause in *Lemon* v. *Kurtzman, supra* at 619.

(3) The financial statement that must accompany the annual report must reveal "[t]otal receipts and total incomes from all sources." Section 309.53(3)(a), Jurisdictional Statement at A-80. This forces a church to reveal income from its members and from other levels of the church, information that should be beyond view of government in a democratic society, let alone one with a Constitution guaranteeing free exercise of religion and a wall of separation, however blurred, indistinct, and variable, between church and state. *Lemon* v. *Kurtzman, supra* at 614. In *Buckley* v. *Valeo,* 424 U.S. 1, 64 (1976), this Court noted that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Later the Court said that "the invasion of privacy of belief may be as

great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations." *Id.* at 66. Although this Court in *Buckley* indicated that governmental encroachments on First Amendment rights sometimes can be justified, it applied a "strict test" involving "exacting scrutiny." *Id.* at 64-65. The test requires more than a "mere showing of some legitimate governmental interest." *Id.* at 64. The Court said First Amendment rights might be encroached to preserve "'free functioning of our national institutions.'" *Id.* at 66. Friends of this Court suggest that the Minnesota Charitable Solicitations Act itself excessively encroaches on the free functioning of national institutions — in this case the churches of our land — that are themselves specifically protected by the Establishment and Free Exercise Clauses of the First Amendment from excessive government intervention. Friends of this Court in Argument III, below, suggest a solution that constitutionally satisfies the public interest raised by the State in this case. *Accord, Surinach* v. *Pesquera de Busquets,* 604 F.2d 73, 79 (1st Cir. 1979).

(4) The financial statement must reveal "[f]unds . . . transferred out of state, with explanation as to recipient and purpose." Section 309.53(3)(e), Jurisdictional Statement at A-80. Again, this information should be on the church's side of the wall of separation. It should not be any of the state's business, whether the funds be contributed by members or non-members, if a church treasurer transfers funds to higher church authorities to send missionaries to staff a clinic or school in some distant state or country.[4]

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[4] The Vatican, faced with a large deficit for 1981, is about to ask wealthy dioceses, including those in the United States, to increase their donations to Rome. *Vatican Expecting a $25.6-Million Deficit in 1981,* Los Angeles Times, July 16, 1981, at Part I, page 4. If Min-

(5) The financial statement must break down "amounts disbursed or dedicated for each major purpose, charitable or otherwise." Section 309.53(3)(f), Jurisdictional Statement at A-80. This subsection openly invites State authorities to define what is "religious" and what is not. This Court questioned such power in *Cantwell* v. *Connecticut, supra* at 305-06.

(6) The financial information must "set forth separately and not in consolidated form with respect to every chapter, branch, area office . . . within the state which raises or expends more that $10,000." Section 309.53(4), Jurisdictional Statement at A-81. Again, the wall of separation suggests that it is unconstitutional to require the opening of local church records, including information concerning member giving, to government authorities. The Act does permit submission of consolidated information "if the attorney general determines that the interests of the charitable beneficiaries will not be prejudiced." *Ibid.* But the Act apparently does not define "charitable beneficiaries." Who are they? Members or some group of members of the church soliciting the money? The general public or some special subdivision of the general public? If funds are raised for religious ministries, government of any level should not be competent to determine whether the "charitable beneficiaries" will or will not be prejudiced by consolidating financial reports.

(7) The department may deny an application, suspend or revoke any license or registration, or may censure a licensee or registrant if it finds "that the order is in the

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nesota's Roman Catholic churches were subject to the reporting requirements of the Charitable Solicitations Act, donations of those churches to the Vatican would have to be reported and would become public records.

public interest." Section 309.532, Jurisdictional Statement at A-83. Again, government should not be tempted with the arbitrary, perhaps even capricious, power of determining that certain religions (by way of their solicitation activities) are "in the public interest" and that others are not. In *Cantwell* v. *Connecticut, ibid.*, this *Court* ruled against such open-ended powers.

(8) The commissioner may promulgate rules and regulations specifying what actions and omissions constitute "fraudulent, deceptive or dishonest practices." Section 309:532(2), Jurisdictional Statement at A-83. Again, government should not be tempted with framing definitions that by religious gerrymander could make one religious solicitation acceptable but another "fraudulent, deceptive or dishonest." *Cantwell* v. *Connecticut, ibid.*

(9) The commissioner "in his discretion . . . may make public or private investigations as he deems necessary." Section 309.533, Jurisdictional Statement at A-84. In addition, the commissioner may promulgate rules "as are necessary," and the department may enter into reciprocal agreements to exchange information with other states. Sections 309.591 and 309.60, Jurisdictional Statement at A-95 and A-96. Again, the unlimited discretion given the commissioner is impermissible under this Court's decisions in *Cantwell* v. *Connecticut, ibid.*, and *NAACP* v. *Button, supra.* The state's unlimited power here to investigate churches may be good politically — if the churches investigated are unpopular ones — but clearly that power violates First Amendment concepts of government neutrality and easily could lead to political divisiveness along religious lines, a danger this Court warned of in *Lemon* v. *Kurtzman, supra.*

(10) The Commissioner or his designated representatives have, in effect, full investigatory power over any witnesses or "books, papers, correspondence, memoran-

da, agreements or other documents in records . . . [he] deems relevant or material." Section 309.533(2), Jurisdictional Statement at A-85. Apparently this would open *all* church books to government, if the state deemed them relevant or material, even if they involved relationships between a church and its individual members or materials protected by evidentiary privilege.

(11) All required records become public records open for public inspection. Section 309.54(1), and (2) Jurisdictional Statement at A-87. This means that financial statements of *all* income for non-exempt churches, including income from members, will be open for public examination. This may be contrary to the traditions and/or constitutions or bylaws of some denominations. And there would be no better way to lead to harrassment or persecution of new — or old — religious groups by dissidents or former members. This would be intolerable under the Establishment and Free Exercise Clauses of the First Amendment. *Surinach* v. *Pesquera de Busquets, supra* at 78.

(12) Expenditure of more than 50% of income is presumed to be "unreasonable," and even lesser percentages may be challenged by the state, which can deny or revoke registration. Excess expenditures "shall be recoverable from the charitable organization by the attorney general." This Court in *Village of Schaumburg* v. *Citizens for a Better Environment,* 444 U.S. 620, 100 S.Ct. 826, 835-36 (1980), indicated that in some instances it may be reasonable for an organization to spend more than 25% of its income for such purposes. And for an attorney general to seek to recover excess expenditures from a church raises unique church/state questions: Does he levy on tithes or offerings of members? Does he sell local churches? Does he order a special offering?

And if he secures money, what does he do with it? Put it in the state treasury? Give it to another denomination? This section of the Act is impossible to square in any sense with the "no excessive entanglement" prong of the Establishment Clause test. As this Court said in *Everson* v. *Board of Education, supra* at 16, "Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa."

(13) "The attorney general may retain as consultants such accountants or other experts as the administration of this chapter may require." Section 309.582, Jurisdictional Statement at A-95. Perhaps no better way could be devised to enable persons intent on harassing religion or a religious group to be able to do so. Former members might volunteer to rummage through the financial records of the churches with which they previously were affiliated. This is potentially a gross violation of government neutrality in actions involving religion or competing religious interests. *Ibid.; Zorach* v. *Clauson, supra; Epperson* v. *Arkansas, supra; Roemer* v. *Maryland Board of Public Works, supra.*

The Charitable Solicitations Act thus clearly violates the excessive entanglement prong of the Establishment Clause test.

ARGUMENT II

The Court of Appeals in Its Discretion Properly Held That the Exemption Should Be Extended to All Religious Groups.

The Court of Appeals held "that all sects are entitled to claim the religious organization exemption." 637 F.2d at 570. This Court should affirm that holding because the opposite holding — denying the exemption to all religious groups — would leave all churches open to the

excessive government entanglement discussed in Argument I, *supra*. Also as discussed in Argument I, *supra*, the Act, if applied to all religious groups, fails the Establishment Clause test because it has a suspect purpose and its application to churches and their members would inhibit their free exercise of religion, which itself is guaranteed by the First Amendment.

This Court in a property-tax exemption case, *Walz* v. *Tax Commission of City of New York*, 397 U.S. 664, 674 (1970), held that *elimination* of an exemption for churches would tend to expand church-state involvement and to increase direct church-state confrontations and conflicts. Friends of this Court believe elimination of religious exemptions from the Minnesota Charitable Solicitations Act would increase needless church-state confrontations and conflicts.

ARGUMENT III

This Court Has Enunciated the Solution to This Problem: Registration of Solicitors and Application of Penal Laws.

The sensitive issues involving church/state relationships and the public interest involved in this case are not new ones. The names of religious groups may change. The wording of laws may be different. But this Court through the last forty-one years has given answers that are acceptable and proper today if this Court wishes to help conserve religious freedom and at the same time sufficiently satisfy the public interests the State of Minnesota seeks to protect by its Charitable Solicitations Act.

First, this Court has approved simple registration procedures for solicitors.[5] In *Cantwell* v. *Connecticut, supra* at

[5] Amicus General Conference of Seventh-day Adventists suggests its churches supply the following information when registering its Ingathering ministry with civil authorities: names, addresses, and telephone number of local church and local pastor and layperson and

306, this Court held: "Without a doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent."

Second, this Court has held that states may use criminal laws to prevent fraud. In *Cantwell, ibid.*, this Court said: "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit fraud upon the public. Certainly penal laws are available to punish such conduct."

Thomas Jefferson, one of the Founders of this nation and a leader in the drafting and adoption of the First Amendment (*see Everson* v. *Board of Education, supra* at 13), wrote against government discretion in religious matters and indicated his belief that government should limit First Amendment freedoms only in extreme circumstances. In 1779 in a Bill for Establishing Religious Freedom, he said:

> The opinions of men are not the object of civil government. To suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they square with or differ from his own. It is time enough

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local-conference official supervising Ingathering; sample of literature to be distributed; rationale for Ingathering; sample of identification carried by volunteer solicitors; and dates, and, where necessary, hours of the door-to-door-evangelism. 1975 *Annual Council Actions* [of the North American Division on that Church] at 33-34.

> for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.

Quoted in Forman, *The Life and Writings of Thomas Jefferson* 232 (1900).

Thus two concepts should embody the limits on government control of religious solicitations. A state should be permitted to require religious solicitors to register, such registration to be limited to basic identification facts and the individual's authority to solicit for his particular cause. If a state is concerned about fraud disguised as religion, this Court should require that state to resort to its criminal laws with their high requirements of proof. In any event, any disclosure requirement should be limited to funds publicly solicited and not include those contributed by members or affiliated church groups.

SUMMARY OF ARGUMENT

This Court should rule that the Charitable Solicitations Act of the State of Minnesota is unconstitutional because it violates the Establishment Clause of the First Amendment to the Constitution of the United States. The Act fails all three parts of the Establishment Clause test used by this Court. It seeks to regulate religious organizations; a primary effect is to inhibit the free exercise of religion; and it excessively entangles the state in church affairs. All churches should be exempted from the Act's coverage. This Court should conserve the First Amendment right to free exercise of religion by limiting state control of religious solicitations to registration of solicitors and to use of penal laws against those who commit fraud upon the public.

CONCLUSION

Friends of this Court — the General Conference of Seventh-day Adventists, the National Council of Churches, and the Baptist Joint Committee on Public Affairs — respectfully request this Court, for the reasons stated in this brief, to affirm the judgment of the Court of Appeals.

Respectfully submitted,

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